

86-984

IN THE SUPREME COURT OF THE UNITED STATES E D

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Supreme Court, U.S.

DEC 2 1986

CASE _____

JOSEPH F. SPANIOL, JR.
CLERK

SYLVIA BEHAR AND GEORGE BEHAR,

PETITIONERS,

VS.

SOUTHEAST BANK TRUST CO., N.A.
Personal Representative and
Trustees of the ESTATE OF
ALBERTO BEHAR,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO U.S. COURT OF APPEALS,
ELEVENTH CIRCUIT

SYLVIA BEHAR AND GEORGE BEHAR,
PETITIONERS (pro se)
45 E. Rivo Alto Drive
Miami Beach, Florida 33139
TELEPHONE: (305) 673-4384

30/pv



QUESTION PRESENTED FOR REVIEW

WHETHER A DISMISSAL OF CAUSE
OF FRAUD IN DEPRIVATION OF
PROPERTY AND LIBERTY, A TAX
EVASION IS IN VIOLATION OF
CIVIL AND CONSTITUTIONAL
RIGHTS.



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OPINIONS BELOW

On September 3, 1986, a dismissal of the case as entered in the U.S. Court of Appeals Eleventh Circuit.

JURISDICTION

The case to be reviewed is a civil case wherein Petitioners' and deceased son's rights were violated against human and civil rights.

Jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1343.42 U.S.C. 1983 enforced rule of Sup. Ct. 17a) XIV Amend. by U.S. Const. principle of clean hands.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. V and XIV, "No person shall be deprived of life, liberty and property without due process of law.

No person should profit from his own wrong.



STATEMENT OF THE CASE AND FACTS

Petitioner has been for several years unsuccessfully litigating for her civil and constitutional rights in Dade County and State Federal Courts.

The Complaint, reprinted in the Appendix, dated May 13, 1985, and dismissed on January 28, 1986, is directed to Petitioner's and incompetent son's protection of their lives and property, against criminal persons and/or attorneys acting as 2nd co-Trustee together with Southeast Bank Trust Co. in the ALBERTO BEHAR ESTATE, to dissipate and control assets of ONE MILLION DOLLARS (\$1,000,000.00). The solution was in the hands of U.S. Courts to terminate the position of the person acting as 2nd co-Trustee and appoint Petitioner in his stead for her son's protection.

GEORGE BEHAR, 24 years old, died of asphyxiation in a mental hospital on June 23, 1985, tied with leather straps, arms and legs by two

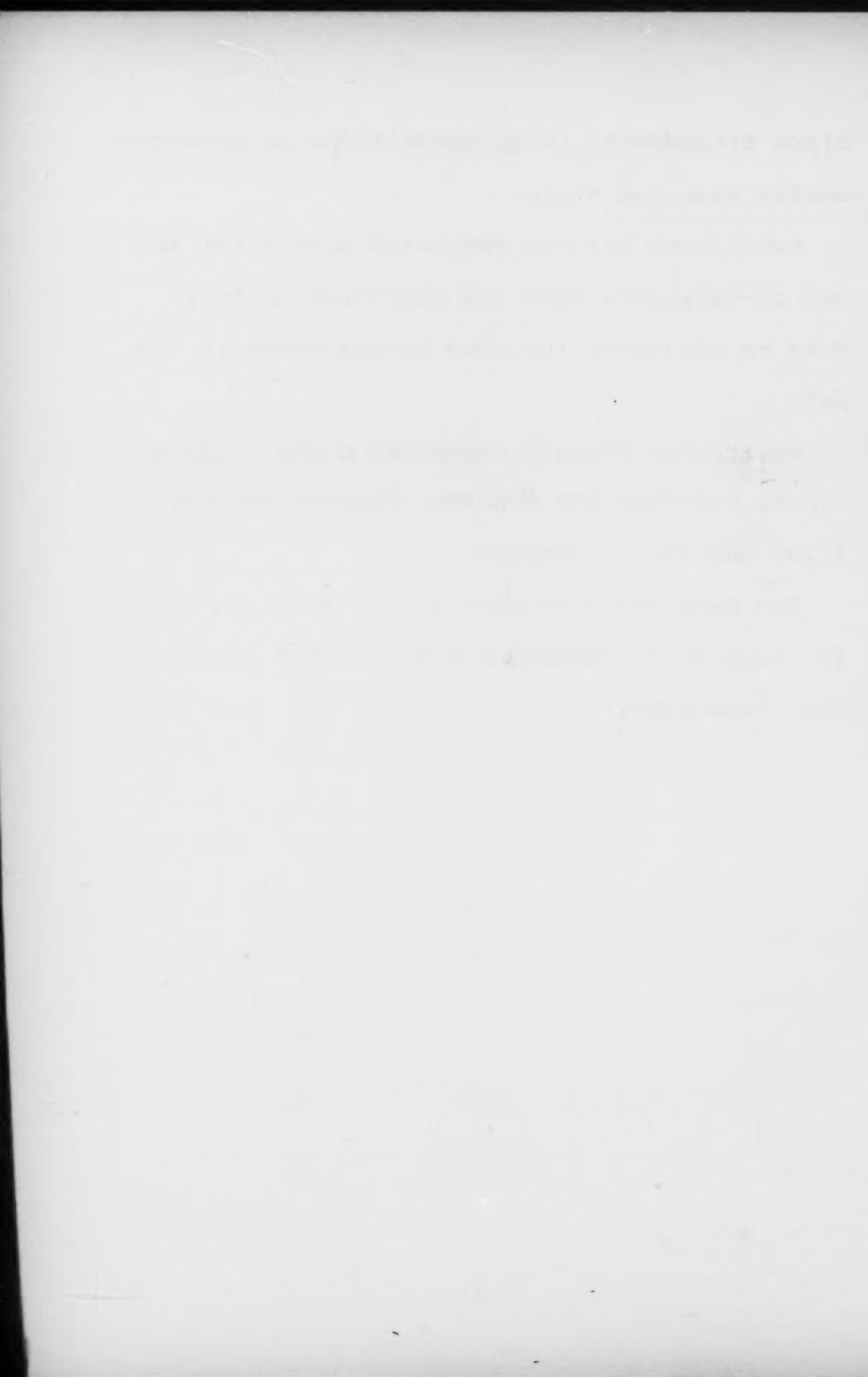


black attendants; it appeared to be an execution murder gangster style.

Petitioner further requested that after the 2nd co-Trustee's name was disclosed in Court that he should be included as Defendant in the case.

Petitioner finally requested clear title of family home and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) in damages.

The case was dismissed in the District Court for lack of jurisdiction and affirmed in the Appellate Court.



REASONS FOR GRANTING THE WRIT

Petitioners' civil and constitutional rights of due process as mandated by XIV Amend. U.S. Const. have been violated in State and Federal Courts in Dade County, Florida, resulting in Petitioners' poor financial situation, unable to pay attorney's fees and deprivation of life (son's death), liberty and property; it has so far departed from the accepted usual course of judicial proceedings or so far sanctioned such a departure by lower court as to call for an exercise of this Court's power or supervision (Supreme Court Rule 17A).

Petitioner is a Cuban American with limited command of the English language. Her rights of equal protection under the law are violated being in a weak position to the attorneys for respondent.

42 U.S. 1983, 28 U.S.C. 1343 grants federal jurisdiction to enforce violations of XIV Const. Amend. whether there is significant



involvement of the State in private conditions to provide redress for deprivation of rights under color law.

State officials, acting under color of law, in a conspiracy with 2nd co-Trustee for the BEHAR ESTATE, former attorneys for divorce action representing husband ALBERTO BEHAR, have been coldly, maliciously, improperly ruling in favor of these "gentlemen," tricky legalities, against Petitioners and deceased son, violating constitutional sacred principles of liberty and property.

Parrot v. Taylor, 101 S.Ct. 1908, which says state officials under color of law intentionally deprive property or permitted to do so, person aggrieved is entitled to relief only with the direct intervention of state officials (emphasis added) through their unfair rulings, deprivation of properties, money and deceased son's abuse could occur.

The unfair, malicious rulings are:

1. Fraudulent, Incorrect Settlement.

This document was signed by Petitioner in November 1979 in Trial Court in divorce proceedings against Petitioner (copy of Agreement made a part of record). Trial Court lost jurisdiction after husband's demise in January 1979.

The Agreement is not a private contract between private parties; it is part of a divorce action, which is a state action, approved and signed by the Trial Judge.

2. Son's Custody. Petitioner was deprived of her incompetent only son's custody, although the Court found her a fit, normal, good person, but appointed a Guardian Attorney Howard Ullman, alleging it was for GEORGE BEHAR's best interest. This guardianship cost the BEHAR ESTATE more than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and resulted in GEORGE BEHAR's terrible death in a mental hospital in June 1985, where he was locked up like a prisoner for five (5) years. GEORGE BEHAR's real guardian was not Mr. Ullman; he was a mere nominee. The real guardians were the 2nd co-Trustee, attorneys for the divorce.



The state officials approved and signed all criminal actions in favor of the Guardian against GEORGE BEHAR's protection.

3. Dismissal of Petitioner's Complaints.

Petitioner's rights of due process have been denied by state officials and the opportunity to confront the respondent in front of a jury to award Petitioner her rights, correct error and fraud.

State officials ruled in favor of the respondents who should be convicted of perjury, fraud, tax evasion in Estate Tax forms using Petitioner's name, misrepresenting real truth and for criminal abuses against GEORGE BEHAR and constant harassment against the Petitioner, including an attempt of murder against Petitioner to die of asphyxiation by two (2) black men similar to son's death. Petitioner contents this case transpires the deterioration of the judicial system in Dade County and Appellate Courts.



Petitioner has been informed by famous attorneys about the fraud and abuse involved. These attorneys refuse to accept the case on a contingency basis; but advised Petitioner to take care of her person being surrounded by bandits and thieves.

Petitioner came from Cuba in 1960 expecting justice in this country; her dreams have been defrauded. Petitioner lost son's custody that caused him his death; and if not successful in this petition to the highest court of the United States, Petitioner will be left homeless and penniless and the co-Trustee, attorneys for husband's divorce, will succeed in controlling and disbursing ONE MILLION DOLLARS (\$1,000,000.00) through attorneys' fees and charities by them selected as directed in the BEHAR Last Will to be distributed after GEORGE BEHAR's death.

Petitioner invoked the doctrine of equitable estoppel. Cases Janke Const. v. Vulcan 527 F.2d 772 as in the Janke case, attorney for respondents misrepresents and does not speak



the truth stating that the Petitioner receives awards in the Agreement for TWO HUNDRED EIGHTY-SIX THOUSAND DOLLARS (\$286,000.00) which is false. This amount is also included in Estate Tax forms for the BEHAR ESTATE and no taxes were paid. It was already in former paragraph the jurisdiction issue which makes the document defective and erroneous. Jackson v. Travelers Ins. 403 Fed. Supp. 986 states that the necessary elements for estoppel are: (a) lack of knowledge, (b) reliance in misrepresentation, and (c) action based on the untrue statement resulting in injury. All these elements are present in Petitioner's case as affirmative defense and basis for jurisdiction.

Principle of Clean Hands. No person should profit from his own wrong.

Attorneys for respondents which include 2nd co-Trustee of the BEHAR ESTATE and attorneys for husband's divorce should be convicted of fraud. Their greed for money conceived the

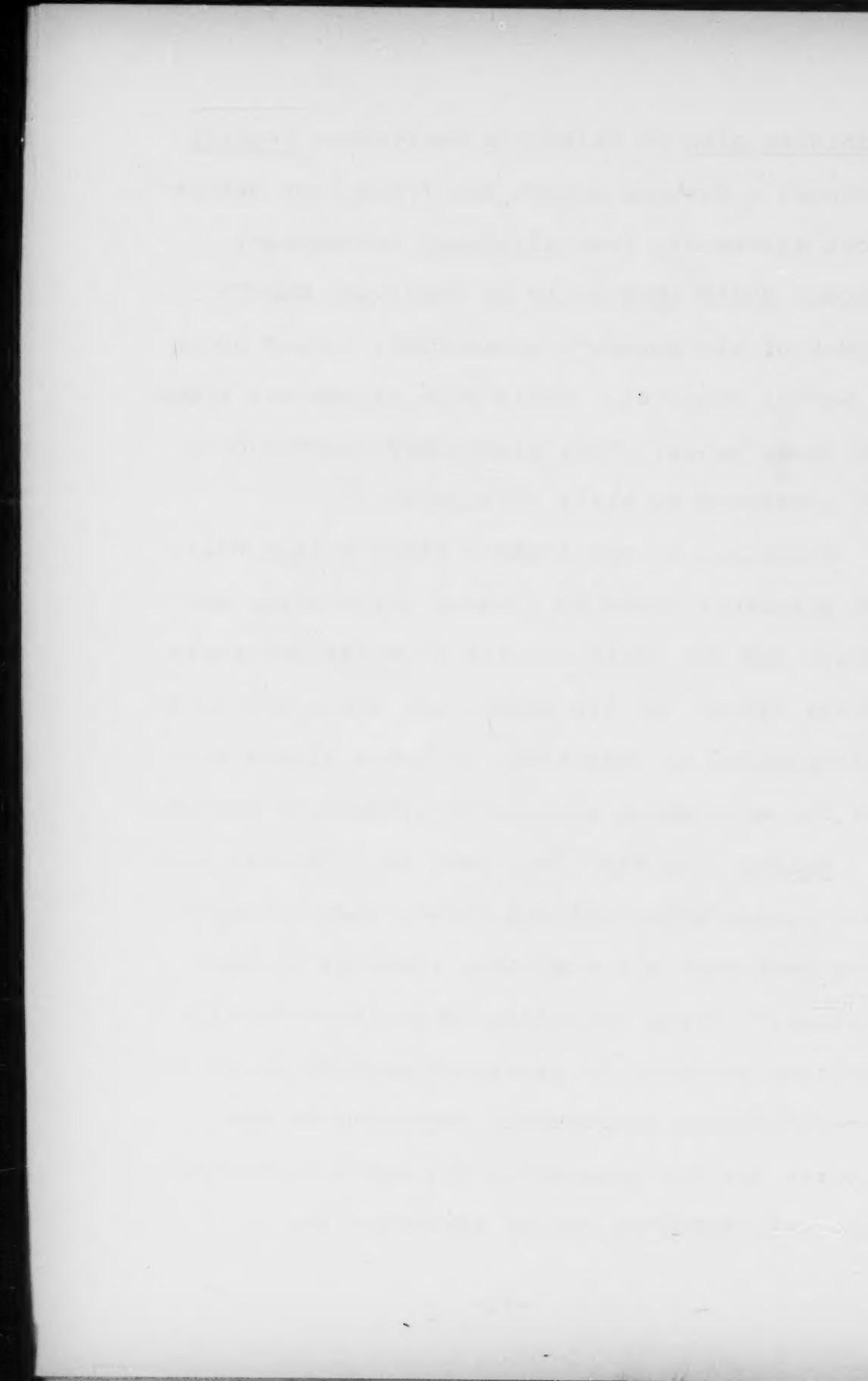


sinister plan to eliminate Petitioner legally through a divorce action and fraudulent settlement agreement, then eliminate incompetent GEORGE BEHAR physically by depriving GEORGE BEHAR of his mother's protection, locked up in a mental hospital. Their poor victim was close to their hands. This plan could succeed only if consented by state officials.

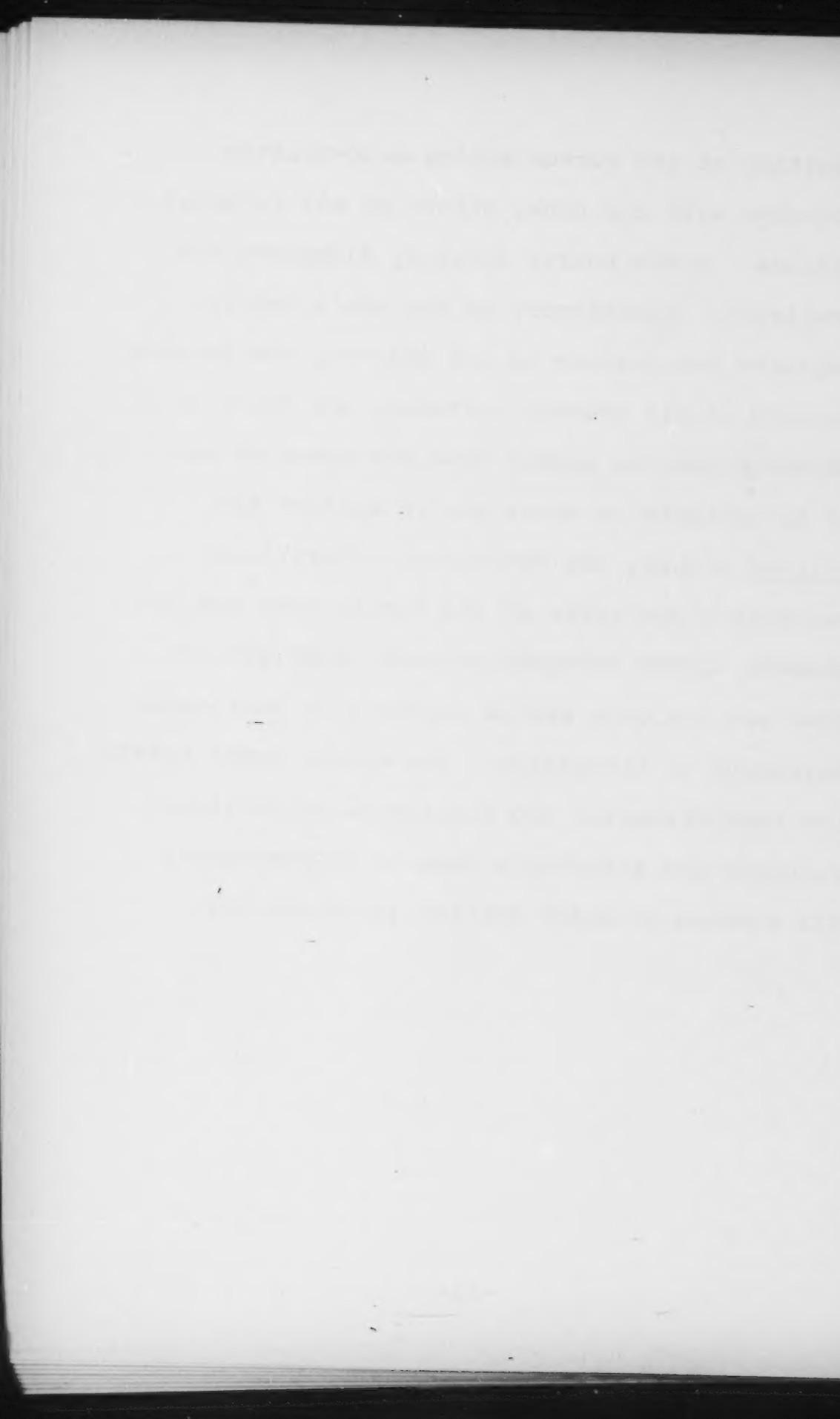
According to the ALBERTO BEHAR's Last Will, no principal could be invaded until after son's death and who would benefit from its interests while alive. At his death, all money was to be distributed to charities; it means almost all of its entireties will go to attorneys' pockets.

Equity 22 Fla. Jur. Sec. 23: "Equity will not permit wrong without remedy when litigant has exhausted all available remedies without result." State officials, when intentionally deprive property or permitted another to do so.

Petitioner desperately requested to the courts for her protection for son's protection. The only solution was to terminate the



position of the person acting as co-Trustee together with the bank, author of all criminal actions. State courts unfairly dismissed the complaint. Petitioner, in her son's memory, implores for justice in not allowing the persons authors of all abuses, tortures, and death of GEORGE BEHAR, to profit from his money or use it to litigate in state courts against his beloved mother, the Petitioner, Petitioner requests clear title of the family home and TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) that are the only assets pursuant to Settlement Agreement on litigation. The entire BEHAR ESTATE has been disbursed and dissipated in relative requests and attorney's fees of approximately SIX HUNDRED THOUSAND DOLLARS (\$600,000.00).



CONCLUSION

In view of the importance of facts, consequences, and foregoing reasons, Petitioner submits that a Writ of Certiorary should be issued to review the judgement of the U.S. Court of Appeals, Eleventh Circuit.

Petitioner requests for an injunction against attorneys for respondent for fees to be claimed against the Petitioner, a Quit Claim Deed, clear Title of the family home located at 45 E. Rivo Alto Drive, Miami Beach, Florida, as stipulated in Court and TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) in damages, punitive and compensatory.

CERTIFICATE OF SERVICE

I DO HEREBY certify that a true and correct copy of the above and foregoing document was mailed to MARK DIENSTAG, ESQUIRE, at 21 Southeast First Avenue, Miami, Florida 33139, on

this 1ST day of December 1986.

Sylvia Behar
SYLVIA BEHAR, Petitioner
45 E. Rivo Alto Drive
Miami Beach, Florida 33139
Phone: (305) 673-4384



IN THE SUPREME COURT OF THE UNITED STATES

SYLVIA BEHAR,

PETITIONER,

VS.

SOUTHEAST BANK TRUST CO., N.A.
Personal Representative of the
ESTATE OF ALBERTO BEHAR,

RESPONDENT.

APPENDIX

SYLVIA BEHAR,
PETITIONER.

BT: SYLVIA BEHAR,
PETITIONER
45 E. RIVO ALTO DRIVE
MIAMI BEACH, FLORIDA 33139



IN THE UNITED STATES SOUTHERN
DISTRICT COURT OF FLORIDA,
MIAMI DIVISION

CASE NO. 85-1513 CIV-KEHOE

COMPLAINT

SYLVIA BEHAR, GEORGE
BEHAR,

Plaintiffs,

vs.

SOUTHEAST BANK TRUST CO.,
N.A., PERSONAL REPRESENTA-
TIVES AND TRUSTEES OF THE
ALBERTO BEHAR ESTATE,

Defendants.

Plaintiff for its Complaint says and
alleges:

1. Plaintiff is a citizen of the United
States of America, and a resident of the State
of Florida.

The amount involved is in excess of
\$10,000.00 exclusive of interests, costs and
fees.



2. Defendant's business is in Miami,
Florida.

3. Jurisdiction of the Court is invoked pursuant to Federal Rule of Civil Procedure 9(B) Fraud; Deprivation of Property without Due Process of Law, XIV Amend. U.S. Const.; Evasion of U.S. Taxes, 26 U.S.C.A. 7201; Violation of Civil Rights 42 U.S.C.A. 1983.

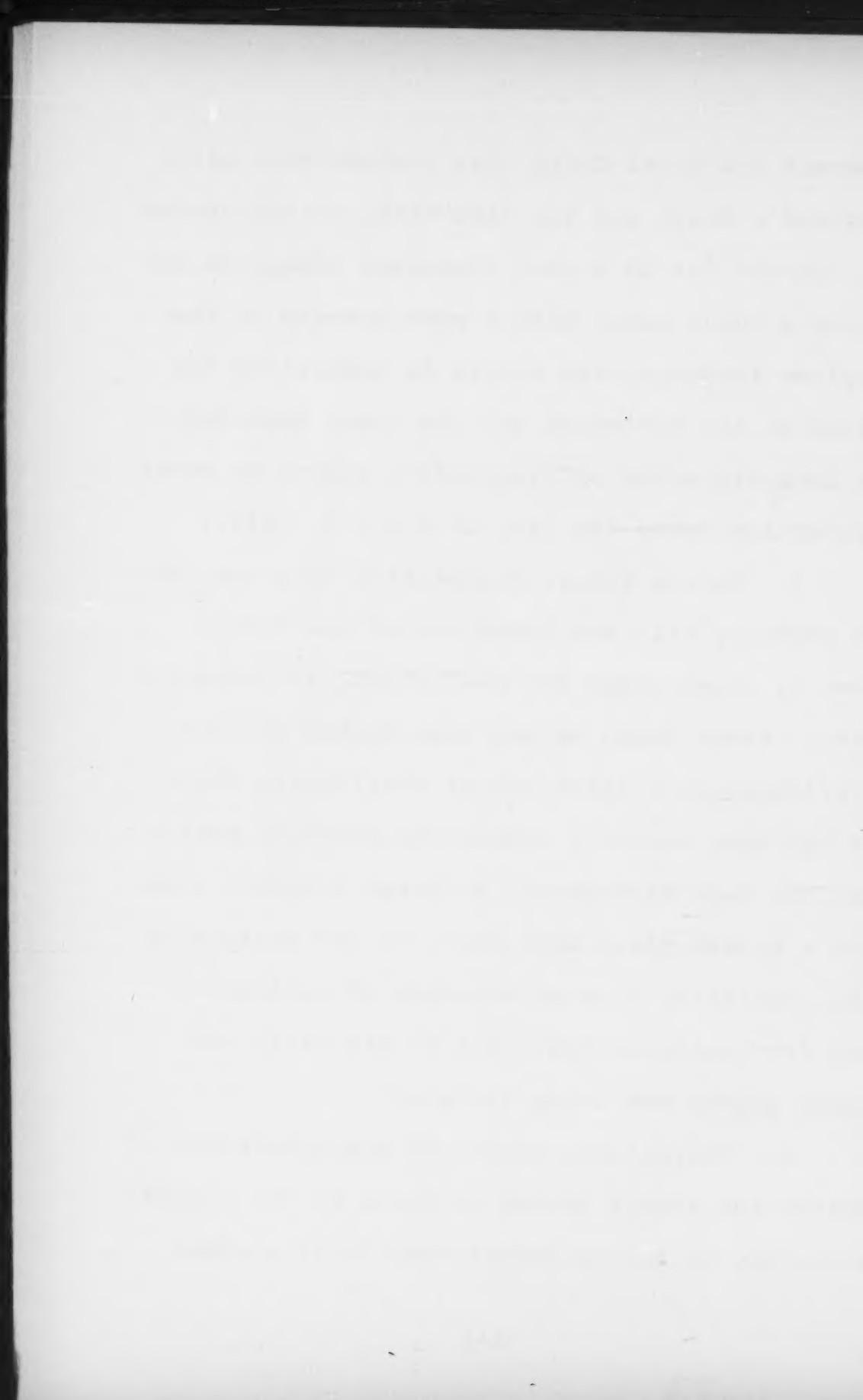
4. The fraud started in a settlement agreement (copy of agreement attached, Exhibit A), signed in November, 1979, in the Trial Court after Husband's death in January, 1979, in a divorce proceeding, Case No. 78-1068, attorneys for the defendant have knowledge that the document is a constructive fraud. It was done with the intention of deceiving the Plaintiff in order to have her claims dismissed in Probate Court, Case No. 79-815, and in the Court of Appeals and for not paying U.S. taxes on the awards from the settlement (copy of tax forms attached, Exhibit B). The constructive fraud derives from a complicated jurisdiction matter



wherein the Trial Court lost jurisdiction after Husband's death and the Plaintiff, unrepresented by counsel due to a poor financial situation and being a Cuban woman with a poor command of the English language, was unable to understand the terms of the agreement and the fraud involved. It is a violation of Plaintiff's rights to equal protection under the law, 28 U.S.C.A., 1343.

5. George Behar, Plaintiff's only son, who is mentally ill, was taken out of the family home by court order for evaluation, in January, 1980. Since then, he has been locked up like a prisoner in a state mental institution where he has been sexually assaulted, severely beaten, had his face disfigured, suffered a broken nose and a broken jaw. Last year, he was critically ill, suffering from an overdose of medication and from malnutrition. All of his civil and human rights are being violated.

6. Thereafter, Plaintiff was attacked, beaten and almost choked to death by two blacks; according to Police detectives, it is a clear



attempt of murder by a party who would profit by her death.

7. Plaintiff has consulted several famous attorneys who have informed her that it is a big fraud and a scandal, and to take good care of her person and of her son, because they are surrounded by thieves and bandits. These attorneys will not handle the Plaintiff's case on a contingency basis.

8. The party or parties acting as co-trustees together with Southeast Bank Trust Co., N.A., are the masterminds of all these tricks and criminal actions, using the legal power obtained from Plaintiff's husband, Alberto Behar, while he was critically ill in the hospital, in order to harass and abuse Plaintiff and her sick son. His main target is the Behar family home, worth \$500,000.00. If he should succeed, Plaintiff and her sick son shall be begging for food in the streets while he shall control and dissipate the entire estate.



9. Plaintiff invokes the doctrine of equitable estoppel to be applied to her case, pursuant to Fed. Rule Civ. Proc. 8(c), in order to terminate the position of the party acting as co-trustee after his name is disclosed in Court and that he also be included as a Defendant in the case; Plaintiff Sylvia Behar would then be appointed in his stand to provide for the protection of herself.

10. There is no joinder in this action, pursuant to Fed. Rule Civ. Proc. No. 19; there is no other interested party in the case.

WHEREFORE, Plaintiff requests the Hon. Court to apply the law and enter a judgment in favor of the Plaintiffs, Sylvia Behar and son, George Behar, against the Defendants in the amount of \$300,000.00 for punitive damages, as well as awarding title of the Behar family to Plaintiff as stipulated in Court, attorneys' fees and other money or action the Court may deem fit and proper in the administration of

justice.

Signed this 13th day of May, 1985.

Respectfully submitted,

SYLVIA BEHAR, PLAINTIFF



UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT
OF FLORIDA

CASE NO. 85-1513-CIV-
MARCUS

SYLVIA BEHAR, GEORGE
BEHAR, : :

Plaintiffs, : :

VS. : :

SOUTHEAST BANK TRUST : :
CO., N.A., PERSONAL : :
REPRESENTATIVE AND : :
TRUSTEES OF THE ALBERTO: :
BEHAR ESTATES, : :

Defendants. : /

ORDER

Upon the Report and Recommendations of a United States Magistrate, and upon independent review of the file, this Court finds that Plaintiff has failed to state a cognizable action under U.S.C. Section 1983. It is hereby

ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus is DENIED.

DONE AND ORDERED at Miami, Florida, this
____ day of January, 1986.

STANLEY MARCUS
UNITED STATES DISTRICT
JUDGE

cc: Sylvia Behar B-1
Elizabeth J. Rickenbacker, Esq.



ANALYSIS

The Defendant has filed a motion to dismiss in which it alleges that there is no subject matter jurisdiction to bring this action under the Civil Rights Statutes, the Constitution of the United States, the Internal Revenue Code or the Federal Rules of Procedures. This Court agrees with Defendant's contention. As the Defendant further points out, the Plaintiff, Sylvia Behar was not George Behar's guardian and is therefore incapable of bringing a suit on his behalf without the consent of his Guardian, Howard F. Ullmann.

Plaintiff has attempted to invoke jurisdiction pursuant to Fed. R. Civ. P. 9(b) and 8(c). Rule 8(c) is clearly improper since it concerns pleading affirmative defenses and grants of jurisdiction. Rule 9(b) is also improper since it deals with pleading special matters such as fraud. Rule 9 is not a grant of jurisdiction to the Federal District Court over all actions regarding the issue of fraud.

Plaintiff also seeks to establish jurisdiction under 26 U.S.C. Section 7201 entitled, "attempt to evade or defeat tax." As the Defendant aptly points out this section addresses any attempt to evade or defeat tax. This is a criminal statute. A careful reading of the Statute shows that there is absolutely no provision for a citizen's suit with regard to taxes. The Court agrees with the Defendant's assessment, that a private citizen cannot bring a civil action pursuant to a federal criminal statute, unless specifically granted by law. Clearly, this is not the case and as such the Plaintiff has failed to establish that this court has jurisdiction under the above forementioned statute.

The Plaintiff further asserts that this Court has jurisdiction pursuant to the Fourteenth Amendment to the United States Constitution, more specifically, Deprivation of Property without due process. The Plaintiff maintains that this court has jurisdiction pursuant to



42 U.S.C. Section 1983 and its jurisdictional counterpart, 28 U.S.C. Section 1343.

This Court notes that 42 U.S.C. Section 1983 states in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

 * *

Plaintiff's complaint must fail since no state action has been alleged. Plaintiff's allegations concern a trust company and trustees of her deceased ex-husband. As there is no state action, Plaintiff has not stated a claim cognizable under Section 1983. This, however, would not necessarily preclude an action in state court. As the Defendant points out the



Plaintiff has litigated this claim various times in the federal and state courts. The issues presented in the present case are not of constitutional dimension. This court, therefore does not have jurisdiction pursuant to 42 U.S.C. Section 1983 or its jurisdictional counterpart 28 U.S.C. Section 1343.

CONCLUSION

This Court has carefully reviewed the record in the matter as well as the applicable law, and being fully advised in the premises, it is hereby

RECOMMENDED that Plaintiff's complaint against Defendants be DISMISSED for lack of subject matter jurisdiction.

Pursuant to 28 U.S.C. Section 636(b)(1), the parties may serve and file written objections to this report with the Honorable Stanley Marcus, United States District Judge, within ten (10) days after being served with a copy of this report and recommendation. See Nettles v.



Wainwright, 667 F.2d 404 (5th Cir., Unit B,
1982).

DATED at Miami, Florida, this _____ day
of November, 1985.

PETER R. PALERMO,
CHIEF U.S. MAGISTRATE



IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 86-5165

Non-Argument Calendar

SYLVIA BEHAR, Plaintiff-Appellant,
BEORGE BEHAR, Plaintiff,
versus
SOUTHEAST BANK TRUST COMPANY,
ETC., ET AL., Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(September 3, 1986)

Before FAY, ANDERSON and EDMONDSON, Circuit Judges,
PER CURIAM.

AFFIRMED. See Circuit Rule 25.¹